

## GENERAL TERMS AND CONDITIONS

### A. Contract Exhibits

This Contract between the Department of Alcohol and Drug Programs (State) and the county named in the Standard Agreement attached hereto (Contractor) consists of the Standard Agreement: Exhibits A1, consisting of the Contractor's Fiscal Allocation Detail, Prevention and Treatment Programs Fiscal Summaries, and Provider and Service Fiscal Detail; this Exhibit B, entitled "General Terms and Conditions," which contains Contract provisions applicable to all of the Contractors, Exhibit C, which defines the rights and obligations of the parties regarding Negotiated Net Amount (NNA) funds; and Exhibit D (if applicable), which defines the rights and obligations of the parties regarding Medicaid/Medi-Cal funds, as expended through the Drug Medi-Cal (DMC) Program.

### B. Contract Term

The term of this Contract shall be from July 1, 2007 through June 30, 2010. Except as provided in Exhibit C, Article III, Sections H and I, the expenditure period for the funds available hereunder shall be as stated on Exhibit A1. State is under no obligation to extend or renew this Contract.

### C. Nullification of Exhibit D (if applicable)

The parties agree that if the Contractor fails to comply with the provisions of Health and Safety Code (hereinafter referred to as HSC) Section 11758.46 including, without limitation, the deadlines in Subsections E and G(3) of this Exhibit B, Exhibit D shall be null and void and severed from the remainder of this Contract.

In the event Exhibit D becomes null and void, an updated Exhibit A1 will take effect reflecting the removal of DMC State General Fund (SGF), DMC Perinatal State General Fund (PSGF), and federal Medicaid funds from this Contract. Exhibit C of this Contract will remain in effect until amended or terminated.

### D. Unenforceable Provisions

In the event any provision of this Contract is held invalid or unenforceable by any court of competent jurisdiction, the holding will not invalidate or render unenforceable any other provision hereof.

### E. Use of State Funds

1. Contractor may not use or transfer SGF DMC funds allocated pursuant to Exhibit D to SGF discretionary funds allocated pursuant to Exhibit C or to pay for any non-DMC services.

2. SGF provided by the California Department of Corrections and Rehabilitation (CDCR) through an interagency agreement shall be subject to specific expenditure requirements as stated in the “Services to California Department of Corrections and Rehabilitation Parolee Services Network,” Document 1D(a), incorporated by this reference.

**F. Contract Amendments**

1. Both the Contractor and the State may agree to amend or renegotiate the Contract.
2. Contract amendments will be required to change encumbered amounts for each year of a multi-year contract period.
3. If this Contract is based on the preliminary allocation, or rates and requirements issued before the passage of the applicable State Fiscal Year (FY) Budget Act and Trailer Bill(s), Contractor shall submit a contract amendment with a budget that reflects the revised allocation, rates, a plan for expenditure of prior year unexpended SGF, and other requirements within 60 days of the State’s release of the Budget Act Allocation. In the event the Contractor has not submitted a contract amendment with all required Contractor and Subcontractor fiscal detail within 60 days of the release of the Budget Act Allocation, State will withhold all NNA payments under Exhibit C of this Contract until the required amendment is received by the State.
4. Contract amendments may be submitted by the Contractor until May 1 of each of the contract's fiscal years. An amendment proposed by either party shall be forwarded in writing to the other party.
  - (a) The proposed amendment submitted by Contractor shall include revised County and Provider Prevention and Treatment Programs Fiscal Summary and Detail Data, Exhibit A1, and a statement of the reason and basis for the proposed change.
  - (b) Amendments shall be duly approved by the County Board of Supervisors or its authorized designee, and signed by a duly authorized representative.
5. No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties.

6. Contractor acknowledges that any newly allocated funds that are in excess of the initial amount for each fiscal year may be forfeited if the State does not receive a fully executable contract amendment on or before June 30.

G. Termination

1. This Contract may be terminated by either party by delivering written notice of termination to the other party at least 30 days prior to the effective date of termination. The notice shall state the effective date of and reason for the termination. In the event of changes in law that affect provisions of this Contract, the parties agree to amend the affected provisions to conform to the changes in law retroactive to the effective date of such changes in law. The parties further agree that the terms of this Contract are severable and in the event that changes in law render provisions of the Contract void, the unaffected provisions and obligations of this Contract will remain in full force and effect.
2. State may terminate this Contract immediately for cause. The term “for cause” means that the Contractor failed to meet the terms, conditions, and/or responsibilities of the Contract. State shall provide the Contractor with written notice of the termination, including the effective date and reason for the termination. The termination of the Contract shall be effective as of the date indicated in the written notice.
3. The following additional provisions regarding termination apply only to Exhibit D of this Contract:
  - (a) In the event the federal Department of Health and Human Services (hereinafter referred to as DHHS), the California Department of Health Care Services (hereinafter referred to as DHCS), or State determines Contractor does not meet the requirements for participation in the DMC Program, State will terminate payments for services provided pursuant to Exhibit D of this Contract for cause.
  - (b) All obligations to provide covered services under this Contract will automatically terminate on the effective date of any termination of this Contract. Contractor will be responsible for providing or arranging for covered services to beneficiaries until the effective date of termination or expiration of the Contract.

Contractor will remain liable for processing and paying invoices and statements for covered services and utilization review requirements prior to the expiration or termination until all obligations have been met.

(c) In the event payment for services under Exhibit D of this Contract is terminated, Contractor shall refer DMC clients to providers who are certified to provide the type(s) of services the client has been receiving.

4. In the event this Contract is terminated, Contractor shall deliver all of its fiscal and program records pertaining to the performance of this Contract to the State, which will retain the records for the required retention period.

**H. Audit**

1. In addition to the audit requirements in Exhibit C and D, this Contract, and any Subcontracts, shall be subject to the examination and audit by the California Bureau of State Audits for a period of three years from the date that final payment is made pursuant to the Contract (Government Code, Section 10527).

2. Contractor agrees that the State, the Comptroller General of the United States, and any authorized representatives have the right to review, obtain, and copy all records pertaining to the performance of this Contract. Contractor agrees to provide the State with any and all relevant information requested.

3. All expenditures of state and federal funds furnished to the Contractor and its Subcontractors pursuant to this Contract are subject to audit by the State. Such audits shall consider and build upon external independent audits performed pursuant to audit requirements of the Office of Management and Budget (OMB) Circular A-133 (Revised June 2003). Objectives of such audits may include, but not be limited to, the following:

(a) To determine whether units of service claimed/reported are properly documented by service records and accurately accumulated for claiming/reporting;

(b) To validate data reported by the Contractor for prospective contract negotiations;

(c) To provide technical assistance in addressing current year activities and providing recommendations on internal controls, accounting procedures, financial records, and compliance with laws and regulations;

(d) To determine the cost of services, net of related patient and participant fees, third-party payments, and other related revenues and funds;

- (e) To determine that expenditures are made in accordance with applicable state and federal laws and regulations and contract requirements; and/or,
    - (f) To determine the facts in relation to analysis of data, complaints, or allegations, which may be indicative of fraud, abuse, willful misrepresentation, or failure to achieve the Contract objectives of Exhibit C or Exhibit D.
  - 4. Contractor shall comply, and shall require that its Subcontractors comply, with all terms and conditions of this Contract and all pertinent state and federal statutes and regulations. Contractors and its Subcontractors shall permit the State, DHCS, DHHS, Comptroller General of the United States, or other authorized state or federal agencies and representatives, to inspect or otherwise evaluate the quality, appropriateness, and timeliness of services performed under this Contract. Contractor shall allow the State, DHCS, DHHS, the Comptroller General of the United States, and other authorized state or federal agencies and representatives to review and copy any and all books and records maintained by the Contractor and its Subcontractors related to these services at any time during normal business hours. Unannounced visits may be made at the discretion of the State. Employees who might reasonably have information related to such records may be interviewed.
  - 5. The refusal of the Contractor or its Subcontractors to permit access to and inspection of books, records, and facilities, or interviews with employees, as described in this part constitutes an express and immediate material breach of this Contract and will be sufficient basis to terminate the Contract for cause or default.
- I. Debarment and Suspension Certification
- 1. By signing this agreement, Contractor agrees to comply with federal suspension and debarment regulations found in 45 CFR Part 76. “Debarred” means excluded or disqualified from contracting with the federal, State or local government.
  - 2. By signing this agreement, Contractor certifies to the best of his or her knowledge and belief, that it and its principals:
    - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.

- (b) Will include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
  - 3. If the Contractor is unable to certify to any statements in this certification, Contractor shall submit an explanation to the State.
  - 4. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, State may terminate this contract for cause or default.
- J. Lobbying and Restrictions and Disclosure Certification
- Applicable to any federally funded grant or contract in excess of \$100,000 per Title 31, USC, Section 1352 and 45 CFR Part 93:
- 1. Certification and Disclosure Requirements
    - (a) Each person (or recipient) who requests or receives a contract, subcontract, grant, or subgrant, which is subject to Title 31, USC, Section 1352, and which exceeds \$100,000 at any tier, shall file a certification (in the form set forth in Exhibit C, Document 1W, consisting of one page, entitled "Certification Regarding Lobbying") that the recipient has not made, and will not make, any payment prohibited by Paragraph 2 of this provision.
    - (b) Each recipient shall file a disclosure (in the form set forth in Exhibit C, Document 1X, entitled "Disclosure of Lobbying Activities - Standard Form – LLL") if any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence any officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with this federal grant.
    - (c) Each recipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

- (d) Each recipient shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affect the accuracy of the information contained in any disclosure form previously filed by such person under Paragraph 1(b) of this provision herein. An event that materially affects the accuracy of the information reported includes:
- i A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action;
  - ii A change in the person(s) or individuals(s) influencing or attempting to influence a covered federal action;
  - iii A change in the officer(s), employee(s), or member(s) contacted for the purpose of influencing or attempting to influence a covered federal action;
  - iv Each person (or recipient) who requests or receives from a person referred to in Paragraph 1(a) of this provision a contract, subcontract, grant or subgrant exceeding \$100,000 at any tier under a contract or grant shall file a certification, and a disclosure form, if required, to the next tier above; and,
  - v All disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the person referred to in Paragraph 1(a) of this provision. That person shall forward all disclosure forms to AOD program contract manager.

## 2. Prohibition

Section 1352 of Title 31, U.S.C., provides in part that no Federal appropriated funds may be expended, have been paid, or will be paid by the recipient of a federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

K. Restrictions on Grantee Lobbying – Appropriations Act Section 503

- 1) No part of any appropriation contained in this Act shall be used, other than for formal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself or any State legislature, except in presentation to the Congress or any State legislative body itself.
- 2) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

L. Restrictions on Salaries

Contractor agrees that no part of any federal funds provided under this Contract shall be used by the Contractor or its Subcontractors to pay the salary and wages of an individual at a rate in excess of Level I of the Executive Schedule. Salary and wages schedules may be found at <http://www.opm.gov/oca>. SAPT Block Grant funds used to pay a salary in excess of the rate of basic pay for Level I of the Executive Schedule shall be subject to disallowance. The amount disallowed shall be determined by subtracting the individual's actual salary from the Level I rate of basic pay and multiplying the result by the percentage of the individual's salary that was paid with SAPT Block Grant funds (Reference: Terms and Conditions of the SAPT Block Grant award.)

M. Child Support Compliance Act

Contractor acknowledges that it:

1. Recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the California Family Code; and,
2. To the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.



N. Union Organizing

Contractor, by signing this Agreement, hereby acknowledges the applicability of California Government Code Sections 16645 through Section 16649 to this Contract.

1. Contractor will not assist, promote, or deter union organizing by employees performing work on a state service contract, including a public works contract.
2. No state funds received under this Contract will be used to assist, promote, or deter union organizing.
3. Contractor will not, for any business conducted under this Contract, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing unless the state property is equally available to the general public for holding meetings.
4. If the Contractor incurs costs, or makes expenditures to assist, promote, or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and the Contractor shall provide those records to the Attorney General upon request.

O. Primary Prevention

Prevention is defined as strategies, programs and initiatives which reduce both direct and indirect adverse personal, social, health, and economic consequences resulting from problematic alcohol and other drug (AOD) availability, manufacture, distribution, promotion, sales, and use. The desired result is to promote safe and healthy behaviors and environments for individuals, families and communities.

The Contractor shall expend not less than its allocated amount of the Substance Abuse Prevention and Treatment (SAPT) Block Grant on “primary prevention” for individuals who do not require treatment for alcohol and other drug use as described in the SAPT Block Grant requirements (45 CFR 96.125). Inappropriate use of these funds for non-primary prevention services will require repayment of SAPT Block Grant funds.

This contract and any subcontract shall meet data reporting requirements for capacity, process and outcome as required by federal grant requirements. In addition to the six Center for Substance Abuse Prevention (CSAP) strategies of Information Dissemination, Education, Alternative, Problem Identification and Referral, Community-Based Process, and Environmental, the data for the Institute of Medicine prevention categories of Universal, Selective and Indicated must be reported.

Use of the Strategic Prevention Framework (SPF) is mandatory for all counties beginning FY 2007-2008 and SPF required data must be submitted via CalOMS Prevention as evidence of engagement and use of the practices. Adherence to the SPF by subcontractors is at the discretion of the subcontracting county.

**P. Confidentiality and Security of Information**

1. Contractor agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of all confidential information that it creates, receives, maintains or transmits. Contractor will provide the State with information concerning such safeguards upon request.
2. Contractor and its Subcontractors that provides services covered by this Contract shall comply with all applicable state and federal statutes and regulations regarding confidentiality, including, but not limited to, the confidentiality and security of information requirements in the following:
  - 42 USC Section 290 dd-2
  - Title 42, CFR Part 2
  - Title 45, CFR Part 96, Sec. 96.132(e)
  - Title 42, USC 1320(a)
  - Title 42, USC 1320(d)-1320(d)(8)
  - Title 45, CFR Parts 160, 162, and 164 - the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy and Security Rules
  - Welfare and Institutions Code (hereinafter referred to W&IC), Section 14100.2, which is specific to Medi-Cal
  - Sections 11812 and 11845.5 of the Health and Safety Code (hereinafter referred to HSC)
  - Title 22, California Code of Regulations (hereinafter referred to as Title 22), Section 51009, which is specific to Medi-Cal
  - Civil Code Section 56 through 56.37 – Confidentiality of Medical Information Act
  - HSC Section 123110 through 123149.5 – Patient Access to Health Records

- Civil Code Section 1798.85 – Confidentiality of Social Security Numbers
  - Civil Code Sections 1798.80 through 1798.82 – Customer Records (breach of security)
3. Contractor shall monitor compliance with the above provisions on confidentiality and security and shall include them in all subcontracts.
  4. Contractor shall notify the Information Security Officer, Executive Branch, of the State within twenty-four (24) hours during a work week of any suspected or actual breach of computer system security impacting persons served by the contract, if the security breach would require notification under Civil Code Section 1798.82. Contractor agrees to materially assist the State in any action pertaining to such unauthorized disclosure required by applicable Federal or state laws.

**Q. Nondiscrimination in Employment**

1. During the performance of this Contract, Contractor and its Subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Contractors and its Subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination. Contractors and its Subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Administrative Code, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Contractor and its Subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Contract.

2. Contractor agrees to post, and further agrees to require its Subcontractors to post, in conspicuous places, notices available to all employees and applicants for employment setting forth the provisions of the Equal Opportunity Act [42 USC 2000(e)] in conformance with Federal Executive Order No. 11246, Section 503 of the Rehabilitation Act of 1973 (as amended) and the affirmative action clause required by the Vietnam Era Veterans' readjustment Assistance Act of 1974 (38 U.S.C. 4212). Contractor agrees to

comply, and further agrees to require its Subcontractors to comply, with the provisions of the Rehabilitation Act of 1973 (Section 503) (29 USC 794).

**R. Nondiscrimination in Services**

1. By signing this Contract, Contractor certifies under the laws of the state of California that the Contractor and its Subcontractors shall not unlawfully discriminate in the provision of services because of race, color, creed, national origin, sex, age, or physical, sensory, cognitive, or mental disability as provided by state and federal law and in accordance with Title VI of the Civil Rights Act of 1964 [42 USC 2000(d)]; Age Discrimination Act of 1975 (42 USC 6101); Section 504 of the Rehabilitation Act of 1973 (29 USC 794) (as amended); Education Amendments of 1972 (20 USC 1681); Americans with Disabilities Act of 1990 (42 USC 12101); Title 45, CFR, Part 84; provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.); and regulations promulgated thereunder (Title 2, CCR, Section 7285.0 et seq.); Title 2, Division 3, Article 9.5 of the Government Code, commencing with Section 11135; and Chapter 6 of Division 4 of Title 9 of the CCR, commencing with Section 10800.
2. For the purpose of this Contract, discrimination on the basis of race, color, creed, national origin, sex, age, or physical, sensory, cognitive, or mental disability includes, but is not limited to, the following: denying an otherwise eligible individual any service or providing a benefit which is different, or is provided in a different manner or at a different time, from that provided to others under this Contract; subjecting any otherwise eligible individual to segregation or separate treatment in any matter related to the receipt of any service; restricting an otherwise eligible individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit; and/or treating any individual differently from others in determining whether such individual satisfied any admission, enrollment, eligibility, membership, or other requirement or condition which individuals shall meet in order to be provided any service or benefit.
3. Contractor shall, on a cycle of at least every three years, assess, monitor, and document each Subcontractor's compliance with Section 504 of the Rehabilitation Act of 1973 (as amended) and Americans with Disabilities Act of 1990 to ensure that recipients/beneficiaries and intended recipients/beneficiaries of services are provided services without regard to physical or mental disability. Contractor shall also monitor to ensure that beneficiaries and intended beneficiaries of service are provided services without regard to race, color, creed, national origin, sex, or age.

Contractor shall include nondiscrimination and compliance provisions in all subcontracts. Contractor shall establish written procedures under which service participants are informed of their rights including their right to file a

complaint alleging discrimination or a violation of their civil rights. Participants in programs funded hereunder shall be provided a copy of their rights that shall include the right of appeal and the right to be free from sexual harassment and sexual contact by members of the treatment, recovery, advisory, or consultant staff.

4. No state or federal funds shall be used by the Contractor or its Subcontractors for sectarian worship, instruction, or proselytization. No state funds shall be used by the Contractor or its Subcontractors to provide direct, immediate, or substantial support to any religious activity.
5. Noncompliance with the requirements of nondiscrimination in services shall constitute grounds for state to withhold payments under this Contract or terminate all, or any type, of funding provided hereunder.

**S. Drug-Free Workplace**

Contractor shall comply, and require that its Subcontractors comply, with Health and Safety Code Section 8350 et seq. also known as Drug-Free Workplace Act of 1990. Every person or organization awarded a contract or a grant for the procurement of any property or services shall certify to the contracting or granting agency that it will provide a drug-free workplace in accordance with Health and Safety Code Section 8355.

**T. No Unlawful Use or Unlawful Use Messages Regarding Drugs**

Contractor agrees that information produced through these funds, and which pertains to drug- and alcohol-related programs, shall contain a clearly written statement that there shall be no unlawful use of drugs or alcohol associated with the program. Additionally, no aspect of a drug- or alcohol-related program shall include any message on the responsible use, if the use is unlawful, of drugs or alcohol (HSC Section 11999). By signing this Contract, Contractor agrees that it will enforce, and will require its Subcontractors to enforce, these requirements.

**U. Smoking Prohibition Requirements**

Contractor shall comply, and require that its Subcontractors comply, with Public Law 103-227, also known as the Pro-Children Act of 1994 (20 USC Section 6081, et seq.), and with California Labor Code Section 6404.5, the California Smoke-Free Workplace Law, which requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education, or library services to children under the age of 18 if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are

constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, and Children (WIC) coupons are redeemed.

**V. Adherence to Computer Software Copyright Laws**

Contractor certifies that it has appropriate systems and controls in place to ensure that state or federal funds available under this Contract will not be used for the acquisition, operation or maintenance of computer software in violation of copyright laws. (Reference: Executive Order D-10-99 and Department of General Services Management Memo 00-02).

**W. Noncompliance with Reporting Requirements**

Contractor agrees that the State has the right to withhold payments until Contractor has submitted any required data and reports to the State, as identified in Exhibit C, Document 1F, "Matrix of Documents, Reports, and/or Data – County Submission Requirements for the Department of Alcohol and Drug Programs."

**X. Conflict of Interest**

Contractor acknowledges that state laws on conflict of interest, found in the Political Reform Act, Public Contract Code Section 10365.5, and Government Code Section 1090, apply to this Contract.

**Y. Disputes**

Contractor shall continue to carry out its responsibilities under this Contract during any disputes.

**Z. Assignment**

This Contract is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written agreement.

**AA. Indemnification**

Contractor agrees to indemnify, defend and save harmless the Department and the State of California, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm, or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Contract and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance

of this Contract.

**BB. Independent Contractor**

Contractor, and the agents and employees of the Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers, employees, or agents of State.

**CC. Timeliness**

Time is of the essence in this Contract.

**DD. Limitation on Use of Funds for Promotion of Legalization of Controlled Substances**

None of the funds made available through this Contract may be used for any activity that promotes the legalization of any drug or other substance included in Schedule I of Section 202 of the Controlled Substances Act (21 USC 812).

**EE. Restriction on Distribution of Sterile Needles**

No funds made available through this Contract shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

**FF. Health Insurance Portability and Accountability Act (HIPAA) of 1996**

All DMC claims shall be submitted in electronic HIPAA compliant format (837P) and shall be submitted through the Department of Mental Health's Informational Technology Web Service (ITWS) system.

All submitted claims shall meet ADP HIPAA testing and certification requirements. When Contractor or subcontractor completes its testing and certification process, only HIPAA compliant claims will be allowed for submission to ADP.

The Department will return all non-HIPAA compliant DMC claims to the submitter. Returned claims will not be processed until submitted in the HIPAA compliant format; therefore, reimbursement will not be issued.

If any of the work performed under this Contract is subject to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), then Contractor shall perform the work in compliance with all applicable provisions of HIPAA. Refer to the HIPAA Business Associate Agreement (BAA) in which the County is the Business Associate of the Department (Document 3K). Contractor and the State will cooperate to: (1) determine what work, if any, may be impacted by HIPAA, and (2) amend this Contract if needed to assure compliance with HIPAA.

1. Trading Partner Requirements
  - (a) No Changes. County hereby agrees that for the personal health information (Information), it will not change any definition, data condition or use of a data element or segment as proscribed in the federal HHS Transaction Standard Regulation. (45 CFR Part 162.915.(a))
  - (b) No additions. County hereby agrees that for the Information, it will not add any data elements or segments to the maximum data set as proscribed in the HHS Transaction Standard Regulation. (45 CFR Part 162.915 (b))
  - (c) No Unauthorized Uses. County hereby agrees that for the Information, it will not use any code or data elements that either are marked “not used” in the HHS Transaction’s Implementation specification or are not in the HHS Transaction Standard’s implementation specifications. (45 CFR Part 162.915 (c))
  - (d) No Changes to Meaning or Intent. County hereby agrees that for the Information, it will not change the meaning or intent of any of the HHS Transaction Standard’s implementation specification. (45 CFR Part 162.915 (d))
2. Concurrence for Test Modifications to HHS Transaction Standards. County agrees and understands that there exists the possibility that ADP or others may request an extension from the uses of a standard in the HHS Transaction Standards. If this occurs, County agrees that it will participate in such test modifications.
3. Adequate Testing. County is responsible to adequately test all business rules appropriate to their types and specialties. If the County is acting as a clearinghouse for enrolled providers, County has obligations to adequately test all business rules appropriate to each and every provider type and specialty for which they provide clearinghouse services.
4. Deficiencies. County agrees to cure transactions errors or deficiencies identified by the State, and transactions errors or deficiencies identified by an enrolled provider if the County is acting as a clearinghouse for that provider. When County is a clearinghouse, County agrees to properly communicate deficiencies and other pertinent information regarding electronic transactions to enrolled providers for which they provide clearinghouse services.



5. Code Set Retention. Both Parties understand and agree to keep open code sets being processed or used in this Agreement for at least the current billing period or any appeal period, whichever is longer.
6. Data Transmission Log. Both Parties shall establish and maintain a Data Transmission Log, which shall record any and all Data Transmission taking place between the Parties during the term of this Contract. Each Party will take necessary and reasonable steps to ensure that such Data Transmission Logs constitute a current, accurate, complete, and unaltered record of any and all Data Transmissions between the Parties, and shall be retained by each Part for no less than twenty-four (24) months following the date of the Data Transmission. The Data Transmission Log may be maintained on computer media or other suitable means provided that, if it is necessary to do so, the information contained in the Data Transmission Log may be timely retrieved and presented in readable form.

GG. Procurement Rules

This section is applicable to all Contracts in which equipment, miscellaneous property, commodities and/or supplies are furnished by the State or expenses for said items are reimbursed with state or federal funds.

1. Equipment definitions

Wherever the term equipment and/or miscellaneous property is used, the following definitions shall apply:

- (a) Major equipment: A tangible or intangible item having a base unit cost of \$5,000 or more and greater than the Contractor's or Subcontractor's capitalization level with a life expectancy of one (1) year or more and is either furnished by ADP or the cost is reimbursed through this agreement. Software and videos are examples of intangible items that meet this definition. Major equipment shall be recovered only through straight line depreciation over the class life of the property, as specified in the "Table of Class Lives and Recovery Periods" in federal IRS Publication 946, "How to Depreciate Property," which is available from any office of the IRS.
- (b) Minor equipment: A tangible item having a base unit cost of less than \$5,000 and less than the Contractor's or Subcontractor's capitalization level, with a life expectancy of one (1) year or more, and is either furnished by the State or the cost is reimbursed through this Contract. Minor equipment may be reimbursed as allowable costs in the fiscal year incurred.

- (c) Miscellaneous property: A specific tangible item with a life expectancy of one (1) year or more that is either furnished by the State or the cost is reimbursed through this Contract. Examples include, but are not limited to: furniture (excluding modular furniture), cabinets, typewriters, desktop calculators, portable dictators, non-digital cameras, etc.
- 2. Government and public entities (including state colleges/universities and auxiliary organizations), whether acting as a contractor and/or subcontractor, may secure all commodities, supplies, equipment and services related to such purchases that are required in performance of this Contract. Said procurements are subject to Paragraphs 4 through 8 of this provision. Paragraph 3 of this provision shall also apply, if equipment purchases are delegated to subcontractors that are nonprofit organizations or commercial businesses.
- 3. Nonprofit organizations and commercial businesses, whether acting as a contractor and/or subcontractor, may secure commodities, supplies, equipment and services related to such purchases for performance under this Contract.
  - (a) Equipment purchases shall not exceed \$50,000 annually.
  - (b) All equipment purchases are subject to Paragraphs 4 through 8 of this provision. Paragraph 2 of this provision shall also apply, if equipment purchases are delegated to subcontractors that are either a government or public entity.
  - (c) Nonprofit organizations and commercial businesses shall use a procurement system that meets the following standards:
    - i Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement contract in which, to the best of their knowledge, they have a financial interest.
    - ii Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.
    - iii Procurements shall be conducted in a manner that provides for all of the following:
      - [1a] Avoid purchasing unnecessary or duplicate items.
      - [2a] Equipment solicitations shall be based upon a clear and

accurate description of the technical requirements of the goods to be procured.

[3a] Take positive steps to utilize small and veteran owned businesses.

4. Unless waived or otherwise stipulated in writing by the State, prior written authorization from the appropriate AOD program contract manager will be required before the Contractor or Subcontractor may make a purchase of \$5,000 or more for commodities, supplies, equipment, and services related to such purchases. Contractor shall provide in its request for authorization all particulars necessary, as specified by the State, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from its Subcontractors and public utility services at rates established for uniform applicability to the general public.
5. In special circumstances, determined by the State (e.g., when the State has a need to monitor certain purchases, etc.), the State may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. The State reserves the right to request repayment for any Contractor and/or its Subcontractors purchase that the State determines to be unnecessary in carrying out performance under this agreement.
6. Contractor and/or its Subcontractors shall maintain a copy or narrative description of the procurement system, guidelines, rules, or regulations that will be used to make purchases under this agreement. The State reserves the right to request a copy of these documents and to inspect the purchasing practices of the Contractor and/or its Subcontractors at any time.
7. For all purchases, Contractor and/or its Subcontractors shall maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. All records shall be sufficient to determine the reasonableness of costs incurred by the Contractor and/or its Subcontractors and must be capable of verification by qualified auditors. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor and/or its Subcontractors for inspection or audit.
8. The State may, with cause (e.g., with reasonable suspicion of unnecessary purchases or use of inappropriate purchase practices, etc.), withhold, cancel, modify, or retract the delegated purchase authority granted under Paragraphs 2 and/or 3 of this provision by giving the Contractor no less than thirty (30) calendar days written notice.

HH. Equipment Ownership / Inventory / Disposition

This section is applicable to Contracts in which equipment and/or miscellaneous property is furnished by the State and/or when said items are purchased or reimbursed with state or federal funds. Items shall also include leased equipment, where there is an option to purchase.

1. Wherever the term equipment and/or miscellaneous property is used in this provision, the definitions in the provision for Procurement Rules, Paragraph 1 shall apply.

All equipment and/or miscellaneous property that are purchased/reimbursed with Contract funds or furnished by the State under the terms of this agreement and not fully consumed in performance of this Contract shall be considered State equipment and the property of the State.

- (a) The State requires the reporting, tagging, and annual inventorying of all equipment and/or miscellaneous property that is furnished by the State or purchased/reimbursed with funds provided through this Contract.

Upon receipt of equipment and/or miscellaneous property, Contractor shall report the receipt to the AOD program contract manager and receive State property tags.

- (b) If the Contractor enters into an agreement with a term of more than twelve months, Contractor shall submit an annual inventory of State equipment and/or miscellaneous property to the AOD program contract manager. Contractor shall:
  - i Include in the inventory report, equipment and/or miscellaneous property in the Contractor's possession and/or in the possession of its Subcontractor (including independent consultants).
  - ii Contact the AOD program contract manager to learn how to remove, trade-in, sell, transfer or survey off, from the inventory report, expired equipment and/or miscellaneous property that is no longer wanted, usable or has passed its life expectancy.
  - iii When replacing equipment, the equipment to be replaced shall be used as a trade-in or the equipment shall be sold and the proceeds shall be used to offset the cost of the replacement equipment. "Replacement equipment" means equipment acquired to take the place of other equipment. To qualify as replacement equipment, the equipment shall serve the same or similar functions as the equipment replaced and must be of the

same or similar nature or character, although not necessarily the same model, grade, or quality.

2. Title to State equipment and/or miscellaneous property shall not be affected by its incorporation or attachment to any property now owned by the State.
3. Unless otherwise stipulated, in writing, the State shall be under no obligation to pay the cost of restoration, or rehabilitation of the Contractor and/or its Subcontractors' facility, which may be affected by the removal of any State equipment and/or miscellaneous property.
4. Contractor and/or its Subcontractors shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of State equipment and/or miscellaneous property.

In administering this provision, the State may require the Contractor and/or its Subcontractors to repair or replace, to the State's satisfaction, any damaged, lost or stolen state equipment and/or miscellaneous property. Contractor and/or its Subcontractors shall immediately file a theft report with the appropriate police agency or the California Highway Patrol and the Contractor shall promptly submit one copy of the theft report to the AOD program contract manager.

5. Unless otherwise stipulated by the program funding this Contract, equipment and/or miscellaneous property purchased/reimbursed with Contract funds or furnished by the State under the terms of this Contract, shall only be used for performance of this Contract or another State Contract.
6. Within sixty (60) calendar days prior to the termination or end of this agreement, Contractor shall provide a final inventory report of equipment and/or miscellaneous property to the AOD program contract manager and shall, at that time, query the State as to the requirements, including the manner and method, of returning State equipment and/or miscellaneous property to the State. Final disposition of equipment and/or miscellaneous property shall be at the State expense and according to the State instructions. Equipment and/or miscellaneous property disposition instructions shall be issued by the State immediately after receipt of the final inventory report. At the termination or conclusion of this agreement, the State may at its discretion, authorize the continued use of state equipment and/or miscellaneous property for performance of work under a different State agreement.

7. Motor Vehicles

This section is applicable only if motor vehicles are purchased/reimbursed with agreement funds or furnished by the State under this agreement.

- (a) If motor vehicles are purchased/reimbursed with agreement funds or furnished by the State under the terms of this agreement, within thirty (30) calendar days prior to the termination or end of this agreement, Contractor and/or its Subcontractors shall return such vehicles to the State and shall deliver all necessary documents of title or registration to enable the proper transfer of a marketable title to the State.
- (b) If motor vehicles are purchased/reimbursed with agreement funds or furnished by the State under the terms of this agreement, the State of California shall be the legal owner of said motor vehicles and the Contractor shall be the registered owner. Contractor and/or its Subcontractors may only use said vehicles for performance and under the terms of this agreement.
- (c) Contractor and/or its Subcontractors agree that all operators of motor vehicles, purchased/reimbursed with agreement funds or furnished by ADP under the terms of this agreement, shall hold a valid state of California driver's license. In the event that ten or more passengers are to be transported in any one vehicle, the operator shall also hold a State of California Class B driver's license.
- (d) If any motor vehicle is purchased/reimbursed with agreement funds or furnished by the State under the terms of this agreement, Contractor and/or its Subcontractors, as applicable, shall provide, maintain, and certify that, at a minimum, the following type and amount of automobile liability insurance is in effect during the term of this agreement or any period of contract extension during which any vehicle remains in the Contractor's and/or its Subcontractor's possession.

8. Automobile Liability Insurance

- (a) Contractor, by signing this Contract, hereby certifies that it possesses or will obtain automobile liability insurance in the amount of \$1,000,000 per occurrence for bodily injury and property damage combined or has a program of adequate self-insurance. Said insurance shall be obtained and made effective upon the delivery date of any motor vehicle, purchased/reimbursed with agreement funds or furnished by the State under the terms of this agreement to the Contractor and/or its Subcontractors.

- (b) Contractor shall maintain a copy of the certificate of insurance or a letter of self-insurance which must be made available to the State upon request. Subcontractors shall maintain a copy of the certificate of insurance which shall be made available to the State upon request.
- (c) Contractor agrees that bodily injury and property damage liability insurance or a program of self-insurance, as required herein, shall remain in effect at all times during the term of this agreement or until such time as the motor vehicle is returned to the State.  
Subcontractors agree that bodily injury and property damage liability insurance as required herein, shall remain in effect at all times during the term of this agreement or until such time as the motor vehicle is returned to the State.
- (d) Contractor and/or its Subcontractors agree to provide, at least thirty (30 days) prior to the expiration date of said insurance coverage, a copy of a new certificate or insurance evidencing continued coverage, as indicated herein, for not less than the remainder of the term of this agreement, the term of any extension or continuation thereof, or for a period of not less than one (1) year.
- (e) Contractor and/or its Subcontractors, if not a self-insured government and/or public entity, shall provide evidence, that any required certificates of insurance contain the following provisions:
  - i The insurer will not cancel the insured's coverage without giving thirty (30) calendar days prior written notice to the State.
  - ii The State of California, it's officers, agents, employees, and servants are included as additional insured's, but only with respect to work performed for the State under this agreement and any extension or continuation of this agreement.
  - iii The insurance carrier shall notify the State of California Department of Alcohol and Drug Programs, in writing, of the Contractor's failure to pay premiums; its cancellation of such policies; or any other substantial change, including, but not limited to, the status, coverage, or scope of the required insurance. Such notices shall contain a reference to the Contract number for which the insurance was obtained.
- (f) Contractor and/or its Subcontractors are hereby advised that copies of certificates of insurance may be subject to review and approval by the Department of General Services (DGS), Office of Risk and Insurance Management. The Contractor shall be notified by the State, in writing, if this provision is applicable to this agreement. If DGS approval of the

certificate of insurance is required, Contractor agrees that no work or services involving the motor vehicle shall be performed prior to obtaining said approval.

- (g) In the event the Contractor and/or its Subcontractors fails to keep insurance coverage, as required herein, in effect at all times during vehicle possession, the State may, in addition to any other remedies it may have, terminate this agreement upon the occurrence of such event.

## **II. Site Inspection**

The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premises of the Contractor or its Subcontractors, the Contractor shall provide and shall require its Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

## **JJ. California Outcomes Measurement System (CalOMS)**

### **1. The Contractor shall:**

- (a) Conduct information technology (IT) systems testing and pass State certification testing before commencing submission of CalOMS Treatment data. If the Contractor subcontracts with vendor for IT services, Contractor is responsible for ensuring that the subcontracted IT system is tested and certified by the State prior to submitting CalOMS Treatment data. If contractor changes or modifies CalOMS Treatment IT system, then contractor shall re-test and pass state certification prior to submitting data from new or modified system. Contractor must comply with ADP compliance requirements for data content, data quality, data completeness, reporting frequency, reporting deadlines, and report method.
- (b) Participate in CalOMS informational meetings, training, and readiness meetings for both prevention and treatment.
- (c) Implement and maintain a method for collecting and electronically submitting data for CalOMS Treatment or subcontract for services to submit CalOMS Treatment data electronically.



- (d) Meet the requirements as outlined in the HIPAA Business Associate Agreement (BAA) in which the County is the Business Associate of the Department (Document 3K).
2. The following business rules for the electronic submission of CalOMS Treatment and CalOMS Prevention data are:
- (a) Prevention data is to be submitted to the Department via CalOMS Prevention by all primary prevention providers as the services occur. Services are to be reported by date of occurrence; however, no more than one week's data shall be aggregated into one reported service. The State recommends reporting all services no later than one week after the date of occurrence.
  - (b) All CalOMS Prevention data shall be reviewed by each county and released to the State no later than the end of the first month following the close of each quarter. The reporting quarters are: July through September, October through December, January through March, and April through June.
  - (c) Electronic submission of CalOMS Treatment data is due 45 days from the end of the last day of the report month.
  - (d) If the Contractor cannot submit CalOMS Prevention data by the established due dates, the Contractor shall submit a written request for an extension. The written request shall be approved by the State prior to the established due date.
  - (e) If the Contractor experiences system or service failure or other extraordinary circumstances that affect its ability to timely submit CalOMS Treatment and/or CalOMS Prevention data, and/or to meet other CalOMS Treatment data compliance requirements, the Contractor shall report the problem in writing before the established data submission deadlines. The written notice shall include a remediation plan that is subject to review and approval by the State. A grace period of up to sixty (60) days may be granted, at the State's sole discretion, for the Contractor to resolve the problem before NNA payments are withheld.
  - (f) If the State experiences system or service failure, no penalties will be assessed to Contractor for late data submission.
  - (g) Contractor shall comply with the treatment and prevention data quality standards established by the State. Failure to meet these standards on an ongoing basis may result in withholding NNA funds.

- (h) If the Contractor submits data after the established deadlines, due to a delay or problem, Contractor is still responsible for collecting and reporting data from time of delay or problem.

KK. Drug and Treatment Access Report (DATAR)

1. The Contractor shall:

- (a) Be responsible for ensuring that all treatment providers with whom Contractor makes a contract or otherwise pays for the services, and who are required to report CalOMS Treatment client data, submit a monthly DATAR report in an electronic copy format as provided by the State.
- (b) Ensure that all DATAR reports are submitted to the State by the 10<sup>th</sup> of the month following the report activity month.
- (c) Enroll its providers in the State's web-based DATARWeb program by July 1, 2007, and submit data in an electronic format only by [this date](#).
- (d) In those instances where the Contractors maintains, either directly or indirectly, a central intake unit or equivalent which provides intake services including a waiting list, the Contractor shall identify and begin submitting monthly DATAR reports for those central intake units by a date to be specified by the State.

2. Noncompliance Provision

The Contractor shall be considered compliant if a minimum of 95% of required DATAR reports from the Contractor's treatment providers are received by the due date.

LL. Domestic Partners Act

Pursuant to Public Contract Code 10295.3, no state agency may enter into any contract executed or amended after January 1, 2007, for the acquisition of goods or services in the amount of \$100,000 or more with a contractor who, in the provision of benefits, discriminates between employees with spouses and employees with domestic partners, or discriminates between domestic partners and spouses of those employees.

**MM. Nondiscrimination and Institutional Safeguards for Religious Providers**

Contractor shall establish such processes and procedures as necessary to comply with the provisions of Title 42, USC, Section 300x-65 and Title 42, CFR, Part 54, (Reference Document 1B).

**NN. Force Majeure**

Neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts shall include but not be limited to acts of God, fire, flood, earthquake, other natural disaster, nuclear accident, strike, lockout, riot, freight, embargo, public related utility, or governmental statutes or regulations super-imposed after the fact. If a delay or failure in performance by the Contractor arises out of a default of its Subcontractor, and if such default of its Subcontractor, arises out of causes beyond the control of both the Contractor and Subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for damages of such delay or failure, unless the supplies or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule.

**OO. Counselor Certification**

Any individual providing intake, assessment of need for services, treatment or recovery planning, individual or group counseling to participants, patients, or residents in an ADP licensed or certified program is required to be certified as defined in CCR, Title 9, Division 4, Chapter 8. (Document 3H)

**PP. Limited English Proficiency**

To ensure equal access to quality care by diverse populations, the provider shall:

1. Promote and support the attitudes, behaviors, knowledge, and skills necessary for staff to work respectfully and effectively with clients and each other in a culturally diverse work environment.
2. Have a comprehensive management strategy to address culturally and linguistically appropriate services, including strategic goals, plans, policies, procedures, and designated staff responsible for implementation.
3. Develop and implement a strategy to recruit, retain and promote qualified, diverse and culturally competent administrative, clinical, and support staff that are trained and qualified to address the needs of the racial and ethnic communities being served.

4. Require and arrange for ongoing education and training for administrative, clinical, and support staff in culturally and linguistically competent service delivery.
5. Provide all clients with limited English proficiency access to bilingual staff or interpretation services.
6. Provide oral and written notices, including translated signage at key points of contact, to clients in their primary language informing them of their right to receive no-cost interpreter services.
7. Translate and make available signage and commonly-used written client educational material and other materials for members of the predominant language groups in the service area.
8. Ensure that interpreters and bilingual staff can demonstrate bilingual proficiency and receive training that includes the skills and ethics of interpreting, and knowledge in both languages of the terms and concepts relevant to clinical or non-clinical encounters. Family or friends are not considered adequate substitutes because they usually lack these abilities.
9. Ensure that the clients' primary spoken language and self-identified race/ethnicity are included in the provider's management information system as well as any client records used by provider staff.

**QQ. Intravenous Drug Use (IVDU) Treatment**

Contractor shall ensure that individuals in need of IVDU treatment shall be encouraged to undergo AOD treatment (42 USC 300x-23(b) of PHS Act).

**RR. Tuberculosis Treatment**

Contractor shall ensure the following related to Tuberculosis (TB):

1. Routinely makes available TB services to each individual receiving treatment for alcohol and other drug use and/or abuse;
2. Reduce barriers to patients' accepting TB treatment; and,
3. Develop strategies to improve follow-up monitoring, particularly after patients leave treatment, by disseminating information through educational bulletins and technical assistance.

**SS. Subcontract Provisions**

Contractor shall include all the foregoing provisions in all of its subcontracts.